

The National Park Service 9B Oil & Gas Regulation Revision

A Pictorial Overview

January 2014



Introduction

The National Park Service (NPS) controls all activities associated with the exercise of nonfederal oil and gas rights inside park boundaries under its regulations at 36 CFR, Part 9, Subpart B (“9B Regulations”). At present, 534 nonfederal oil and gas operations exist in a total of 12 park units.

The primary purposes of revising and adding provisions to the existing regulations are to 1) strengthen the NPS’s ability to fulfill its mission to protect park resources and visitor values, 2) provide equitable financial compensation and surety to protect the public’s resources and taxpayer dollars, and 3) create efficiencies in the regulatory requirements. It follows that the need for the revisions flows from limitations in the current regulations in these areas.

Specifically in the proposed rule, the NPS seeks to:

- A. Remove regulatory exemptions that allow for nearly 60% of the wells to operate without NPS approval under the 9B regulations;
- B. Replace current bonding limits with actual cost of reclamation to remove public financial liability and ensure timely reclamation in the event of an operator default;
- C. Collect fees or equivalent in-kind-reclamation for an operator’s privileged use (e.g., new roads and gathering lines) of federal lands or waters outside the boundaries of their mineral lease; and
- D. Add enhanced enforcement tools to address minor acts of noncompliance.

For these primary reasons and others, the NPS is revising its 9B regulations. The following pages provide a pictorial overview of why these revisions are necessary.

Regulatory Status of Nonfederal Oil and Gas Wells In Units of the National Park System

September 2013

Park	State	Regulatory Status			Total Number of Operations	Total Number of Operators
		Grandfathered	No Federal Access	Subject to 9B Regulation		
Alibates Flint Quarries NM	TX			5	5	1
Aztec Ruins NM	NM	1		3	4	2
Big NPres	FL			20	20	1
Big Thicket NPres	TX		2	37	39	16
Big South Fork NRRRA	TN, KY	98	54		152	31
Cuyahoga Valley NP	OH	66	21	3	90	21
Cumberland Gap NHP	TN, KY, VA	2			2	1
Gauley River NRA	WV	28			28	3
Lake Meredith NRA	TX	41		133	174	17
New River Gorge NR	WV	1			1	1
Obed WSR	TN	4	1		5	2
Padre Island NS	TX			14	14	2
12 Parks	8 States	241	78	215	534	98
% of TOTAL	N/A	45%	15%	40%	100%	

A. Regulation of Exempt Operations

The 9B regulations exempt 1) operations that were in existence at the time that the regulations were promulgated and had a valid state or federal permit (45% of the wells known as “grandfathered wells”), and 2) operations that can be reached inside a park without crossing federally owned land or waters (15% of the wells fall under an “access exemption”).



Regulated well in Cuyahoga Valley National Park with good site security and housekeeping

These exemptions are not required by law, and have resulted in unnecessary and avoidable impacts to park resources.

Because of the exemptions, the NPS has had to rely on state regulatory programs, other federal regulatory handles, and the willingness of operators to voluntarily use practices protective of park resources and



Typical exempt well in Big South Fork National River and Recreation Area readily accessible to visitors and wildlife

values. While helpful, this approach often has not achieved the desired level of protection needed to carry out park mandates.

The NPS is proposing to eliminate both of these exemptions.

Grandfather Exemption

This inactive, grandfathered gas well has not produced in nearly 10 years and should have been plugged and the surface reclaimed long ago.

There are over 50 wells in park units in a similar state as this. The NPS suspension authority under the current rule carries little weight when a well is not generating revenue.

The NPS is considering a requirement that operators demonstrate the future utility of wells that remain idle over long periods of time, and meet maintenance standards

for such wells or proceed to well plugging and reclamation of the site.



Gauley River National Recreation Area

No Federal Access Exemption - This poorly operated tank battery is exempt from the 9B regulations because the operator does not use access on or across federal property. Runoff of contaminants to federal property (photo at right) is the primary NPS concern for this site.



Big Thicket National Preserve

Many of the 78 wells in parks operating under the no access exemption are located far from federal lands and waters. Those may see little change from the rulemaking. However, the operation in the above photographs, and others like it, would need to implement stronger spill control equipment and procedures to ensure protection of the federally owned, controlled or administered lands and waters.



Upper Delaware Scenic and Recreational River.

Also, removal of the access exemption may play an important role in the siting and operation of new wells. For example, the Upper Delaware Scenic and Recreational River is 99% private surface estate leaving the NPS with no regulatory handle under the existing rule for

potentially 100's of wells that will likely result from development of the Marcellus Shale within the boundary of this park unit.

B. Financial Assurance

Bonding limits leave the taxpayer exposed in the event of a company default on reclamation and cleanup responsibilities.

The existing regulations place a bonding cap of up to \$200,000 per operator, per park unit. In many cases, the NPS can still adequately bond an operation, but in other cases, an operator's default could present a substantial financial burden on the NPS and the taxpayer.

For example, the estimated cost of reclamation for the single pad, multi-well drilling operation shown below exceeded \$350,000. In this case, the operator proposed additional drilling at a new location, and was not subject to any additional bonding due to the regulatory bonding cap.

NPS estimates that approximately 150 operations have reclamation requirements that exceed the bonding cap. The shortfall in bond coverage for plugging and reclaiming these 150 operations is estimated at \$10 to \$12 million.

Through the rulemaking, the NPS would remove the bonding cap and make bonding equal to the reasonable cost of reclamation for each operation in a unit of the National Park System.

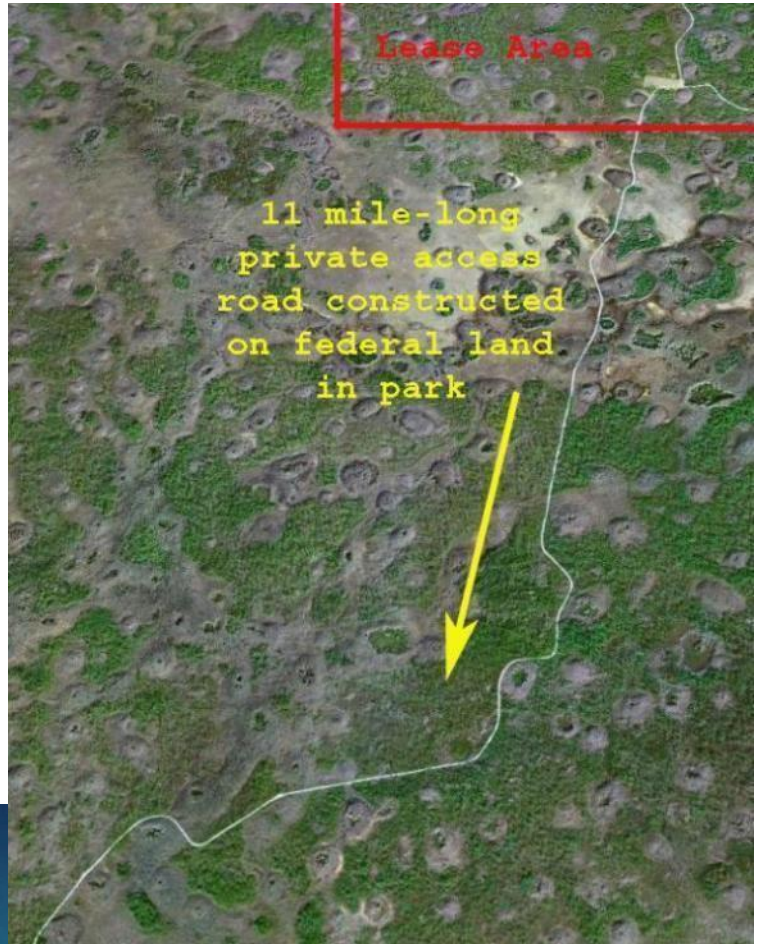


Padre Island National Seashore

C. Fees for Privileged Access Across Federal Land

The current 9B regulations authorize the NPS to charge a fee for use of commercial vehicles on roads administered by the NPS (36 CFR § 9.50). The NPS's proposed rule would supplement the existing regulation by authorizing a fee for privileged use (e.g., new roads and gathering lines) of federal lands outside the boundary of an operator's mineral right. The NPS' proposal also includes the authority to accept in-kind reclamation in lieu of fees.

One of the more extreme examples of uncompensated access occurs at Big Cypress National Preserve where an 11-mile long private oil and gas road was constructed across federal land to reach the operator's private oil and gas lease.



The 11-mile road directly impacts over 45 acres in Big Cypress National Preserve and causes indirect effects on over 3000 acres.

D. Enhanced Enforcement Compliance Tools

Under the existing regulations, the NPS does not have a practical means for handling minor acts of non-compliance. The NPS's current enforcement tools are: suspension of operations or revocation of an approved plan. Through the rulemaking, the NPS proposes to incorporate into the 9Bs the NPS's existing penalty provisions at 36 CFR §1.3, which would authorize law enforcement personnel to cite operators for violation of the 9B regulations.



Big Thicket National Preserve – Note the yellow hose moving the make/break point from the secondary containment loading box inside the bermed area to an open point on top of the berm.



Below are some examples of minor acts of non-compliance.

Unapproved Substandard Practices – In these photos, the tanker truck operator saves walking over the steps a few times, but defeats the approved oil loading design and procedures by running an extension hose (yellow) from the covered loading box to the truck's loading hose (black). However, by making and breaking the hose connection without the benefits of secondary containment, this minor act of non-compliance has an obvious cumulative effect.



Road Maintenance – The approved plan of operations for this short access road (right) calls for restricted vehicle use during saturated conditions. While the violation does not warrant a suspension order, non-compliance can lead to erosion or sedimentation and can increase the need for noisy repair work near the primary visitor use area in the park.



Aztec Ruins National Monument



Padre Island National Seashore

Collection of Equipment and Debris – Well locations can become unsightly collection points for materials no longer needed for operations. These abandoned pipes (left) seem innocuous, but if left unaddressed, may lead to increased storage of abandoned equipment and materials.



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